IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 83

CONNECTICUT RAILWAY AND LIGHTING COMPANY,
Petitioner,

against

EDWARD S. PALMER, JAMES LEE LOOMIS and HENRY K. SAWYER, as Executors of the Estate of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor,
Respondents.

REPLY BRIEF FOR PETITIONER.

GEORGE W. MARTIN,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 63

CONNECTICUT RAILWAY AND LIGHTING COMPANY,
Petitioner,
AGAINST
HOWARD S. PALMER, JAMES LEE LOOMIS and HENRY B. SAWYER, as Trustees of the property of The New York, New Haven and Hartford Railroad Company, Debtor,
Respondents.

REPLY BRIEF FOR PETITIONER

With regard to petitioner's claim for deficiencies in the property returned to it, the respondents contend that the matter "is not now before the Court" (Respond. Brief, p. 34). They say, "it was not included in the 'Questions Presented' in the petition for certiorari nor in the 'Specification of Errors' in petitioner's brief in support thereof."

Accordingly, respondents have elected not to answer petitioner's Point II.

The brief submitted with the petition for certiorari is no part of the petition for the purpose of limiting the scope of the review which is sought.

General Pictures Co. v. *Western Electric Co.*, 304 U. S. 175, 178.

The petition shall contain only a summary and short statement of the matter involved and the reasons relied on for the allowance of the writ.

Rule 38, paragraph 2.

The mention of the claim in the petition is understood to be sufficient to put it before the Court if the writ is granted.

Washington, Virginia & Maryland Coach Co. v. *N. L. R. B.*, 301 U. S. 142, 146.

The claim for deficiencies in the property returned was mentioned in the petition. Three of the rulings below were taken exception to by petitioner, and listed in the petition. The second of these (Petition, p. 3) is:

> "C. R. & L. claimed damages of $2,057,862.02 for deficiencies in the property returned. The District Court allowed $173,537.35. The Circuit Court of Appeals affirmed (R. 1365)."

The *General Pictures Co.* case (304 U. S. 175) was decided May 2, 1938. The petition herein was filed May 28, 1938. Had the opinion in *General Pictures Co.* been

published before the petition herein was filed, the petition would have listed the claim for deficiencies in property returned under the heading "questions presented" as well as under the rulings claimed to be erroneous. This reiteration was not resorted to because, under the *Washington Coach Co.* case (301 U. S. 142), the single mention of the claim was deemed sufficient.

The claim was not referred to in "Reasons Relied on for Allowance of the Writ" in the petition, for the same reason that it was not included in "questions presented": because it involved the construction of a lease and not a matter of general interest or a federal question, and so presumably would not be considered itself a justification for allowing the writ. The claim is exceedingly important to your petitioner; but to elaborate it, after it had been briefly listed, appeared to be an infraction of the injunction in *Rule 38* to be summary and short, direct and concise.

It is submitted that the question of deficiencies in the property returned was properly raised in the petition, and is now properly before the Court.

Respectfully submitted,

GEORGE W. MARTIN,
Counsel for Petitioner.

November, 1938.